

IN RE: TIMOTHY J. SHEA, II

S.J.C. Judgment of Disbarment entered by Justice Ireland on June 19, 2006, with an effective date of July 19, 2006.<sup>1</sup>

SUMMARY<sup>2</sup>

The respondent, who was admitted to the Bar of the Commonwealth on January 19, 1993, concentrated his practice in the area of patent and trademark registration. In April 2004, a client retained the respondent to research and prepare a provisional patent application and draft a confidentiality agreement. The client and the respondent signed a retainer agreement providing for the respondent to be compensated at the rate of \$300 per hour for his work and for the payment of a \$10,000 retainer to be held in the respondent's IOLTA account, with monthly fees and expenses to be invoiced to the client and deducted from the retainer at or shortly after the time the invoice was delivered. The client paid the respondent the \$10,000 retainer in May 2004, and the respondent deposited the funds in his IOLTA Account.

By June 1, 2004, the respondent's legal fees totaled no more than \$5886. Between May 10, 2004, and June 2, 2004, the respondent intentionally withdrew \$8,479 of the client's retainer funds, \$2,593 more than he was entitled to receive, and used the funds for his own business and personal expenses unrelated to the client. In June 2004, without any right or entitlement, the respondent intentionally withdrew an additional \$1480 from the client's retainer funds. By the end of June, the respondent had intentionally converted at least \$4,073 of the client's funds.

The client asked the respondent for a status report on his work on the client's case on several occasions in June and July 2004, but the respondent failed to reply to these requests. On July 20, 2004, the client discharged the respondent and requested a full refund of his retainer. The respondent failed to reply to this request as well. The client then retained new counsel to assist him in securing his file, the balance due from the retainer, and a final bill and accounting.

The new lawyer sent a letter to the respondent on August 3, 2004, telling him that the client had discharged him and demanding a final bill for the respondent's services, the return of the client's file, and the return of the unearned portion of the client's retainer. The respondent received this letter but failed to reply to it, failed to deliver a bill and the file, and failed to refund any portion of the retainer or to account for his use of the client's funds.

By failing to complete a patent application and confidentiality agreement for the client, the respondent violated Mass. R. Prof. C. 1.2(a) (lawyer shall seek the lawful objectives of client) and 1.3 (lawyer shall act with reasonable diligence and promptness). By failing to communicate with his client about the status of the work he was retained to perform, the respondent violated Mass. R. Prof. C. 1.4(a) (lawyer shall keep client informed about status of matter and promptly comply with reasonable requests for information).

By improperly taking his clients' retainer funds before he had earned them, the respondent violated Mass. R. Prof. C. 8.4(c) (lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation) and (h) (lawyer shall not engage in conduct that adversely reflects on fitness to practice). Prior to July 1, 2004, this conduct also violated

Mass. R. Prof. C. 1.15(a) as it then existed (lawyer shall hold client's property separate from lawyer's own property), and after July 1, 2004, 1.15(c). By his failure to return the client's file and failure to refund the unearned portion of the client's retainer after he was discharged, the respondent violated Mass. R. Prof. C. 1.16(d) (upon discharge, lawyer shall return clients property and refund any advance payment of fees that has not been earned).

The client filed a complaint against the respondent with the Office of Bar Counsel. On October 20, 2004, in response to bar counsel's inquiry about the work he had performed for the client, the respondent fabricated an invoice for services he claimed to have rendered on the client's behalf and sent it to bar counsel to cover up his misuse of the clients' retainer funds. This conduct violated Mass. R. Prof. C. 8.4(c), (d) (lawyer shall not engage in conduct prejudicial to the administration of justice), and (h).

The respondent also failed to respond to bar counsel's requests for documentation of his handling and disposition of the client's retainer funds. This conduct violated Mass. R. Prof. C. 8.1(b) (lawyer shall not knowingly fail to respond to lawful demand for information from disciplinary authority), and 8.4 (d) and (g) (lawyer shall not fail without good cause to cooperate with bar counsel's investigation of a complaint).

On April 5, 2005, bar counsel filed in the Supreme Judicial Court a petition for administrative suspension of the respondent for his failure to comply with bar counsel's requests for information made in the course of investigating a complaint. On April 15, 2005, the Court ordered the respondent administratively suspended from the practice of law for his failure to cooperate in bar counsel's investigation. Among other things, the order required the respondent to notify his clients of his suspension, return to his clients all unearned fees and other property to which the clients were entitled, and submit to bar counsel an affidavit of his compliance with the court's order. The respondent failed to comply with the court's order of administrative suspension in violation of Mass. R. Prof. C. 3.4(c) (lawyer shall not knowingly disobey an obligation under the rules of a tribunal), 8.1(b) (lawyer shall not knowingly fail to respond to lawful demand for information from disciplinary authority), and 8.4 (d).

In a second matter, a client consulted with the respondent about obtaining a trademark and registration of her business's logo in July 2004. The respondent agreed to file trademark and logo applications for the client. The respondent informed the client that the filing fee for the trademark application would be \$2,345 and the application fee to register the logo would be an additional \$2,345. The respondent's legal fees for this work were set at \$2,000.

On July 18, 2004, the client gave the respondent a check for \$2,345 as an advance payment of filing fees for the trademark. The respondent used these funds to pay his own obligations unrelated to the client. On August 5, 2004, the client sent the respondent a check for \$2,000 in payment of his legal fee.

Between September 2004 and February 14, 2005, the client sent numerous emails to the respondent requesting information about the status of her trademark and logo applications, but the respondent failed to reply to the client's correspondence. The client also left several telephone messages for the respondent, but the respondent failed to communicate with the client. On February 14, 2005, the client sent the respondent a certified letter requesting a status report on her case. The respondent received that letter in due course, but he failed to reply to it.

In late February, the client discharged the respondent and asked him to return the money she had paid to him. The respondent contacted the client the following day. The client told the respondent that he was discharged and demanded that he return all the funds she had paid to him. On March 2, 2005, the client sent the respondent a certified letter discharging him and demanding the return of her \$4,325. The respondent failed to return any portion of the \$4,325 or to file the client's trademark and logo applications.

By failing diligently to prepare and file the trademark and logo applications, the respondent violated Mass. R. Prof. C. 1.2(a) and 1.3. By failing to communicate with his client about the status of her applications, the respondent violated Mass. R. Prof. C. 1.4(a).

By failing to failing to account for his use of the funds his client gave him to pay for a trademark application, and by failing to refund any monies to his client after he was discharged, the respondent violated Mass. R. Prof. C. 1.15(c) and (d)(1) (lawyer shall promptly render a full written accounting of client's property upon request) and 1.16(d).

On March 24, 2005, the client filed a complaint with the Office of the Bar Counsel about the respondent's conduct. Bar counsel forwarded a copy of the complaint to the respondent on March 29, 2005, and requested a response. The respondent failed to respond to bar counsel's letter or provide any information to bar counsel regarding the trademark matter. These failures violated Mass. R. Prof. C. 8.1(b) (lawyer shall not knowingly fail to respond to lawful demand for information from disciplinary authority), and 8.4(d) and (g) (lawyer shall not fail without good cause to cooperate with bar counsel's request for information made in the course of investigating a complaint).

In a third matter, a client retained the respondent on December 23, 2003, to review the client's website to ensure its conformance with the client's trademark registration and to prepare an affidavit in connection with the trademark suitable for filing with the U.S. Patent and Trademark Office by March 4, 2005. The client agreed to pay the respondent \$275 per hour for his review of the website and a flat fee of \$500 plus expenses, including a \$300 filing fee, to prepare the affidavit. The client gave the respondent a \$5,000 retainer, which the respondent agreed to hold in his IOLTA account, with monthly fees and expenses to be invoiced to the client and then deducted from the retainer.

The respondent deposited the client's \$5,000 retainer into his IOLTA account on January 13, 2004. That same day, he withdrew \$4,500 of the client's funds without any right or entitlement and intentionally used the money to pay his own unrelated personal or business obligations.

Between January 7 and February 4, 2004, the respondent spent no more than one-half hour performing work for the client. After February 4, 2004, the respondent performed no further work of substance for the client. Between January 13, 2004, and March 31, 2004, the respondent, intentionally and without authority, withdrew an additional \$494 of the client's funds from his IOLTA account and intentionally used the funds to pay his own unrelated personal or business obligations.

The client left messages for the respondent in November and December 2004, seeking an update and a meeting to review the respondent's work. The respondent did not respond to these messages. On about January 12, 2005, the client left another message for the respondent. The respondent returned the client's call and asked her for information he claimed to need to complete his affidavit. The client provided the information and asked the respondent to meet with her to explain why he needed information she had previously provided to him. The respondent did not reply to the client's questions, and he failed to communicate further with the client or refund any portion of the \$5,000 retainer the client had paid to him even though he had stopped working on the case.

By failing diligently to pursue the client's case, the respondent violated Mass. R. Prof. C. 1.2(a) and 1.3. By failing to respond to the client's reasonable requests for information, the respondent violated Mass. R. Prof. C. 1.4(a).

By withdrawing the client's retainer funds before he had any right or entitlement to them and by intentionally converting the funds to his own use, the respondent violated Mass. R. Prof. C. 8.4(c) and (h). By failing to refund any monies to the client or to account for his use of the client's retainer, the respondent violated Mass. R. Prof. C. 1.16(d) and 1.15(b) (as it existed

prior to July 1, 2004) and 1.15(d) (as it existed prior to July 1, 2004) (lawyer shall not commingle client funds with personal funds).

The client filed a complaint with the Office of the Bar Counsel about the respondent's conduct, which bar counsel forwarded to the respondent on April 13, 2005, with a request for a response. The respondent intentionally failed without good cause to respond to bar counsel's letter or provide any information regarding the client's case. These failures violated Mass. R. Prof. C. 8.1(b), and 8.4(d) and (g).

On November 7, 2005, bar counsel filed and served a petition for discipline alleging four counts of misconduct by the respondent. The respondent failed to answer or otherwise respond to the petition for discipline.

On March 20, 2006, the Board of Bar Overseers voted to recommend that the respondent be disbarred. On June 19, 2006, the county court (Ireland, J.) entered a judgment of disbarment.

<sup>1</sup> The complete Order of the Court is available by contacting the Clerk of the Supreme Judicial Court for Suffolk County.

<sup>2</sup> Compiled by the Board of Bar Overseers based on the record before the Court.

Please direct all questions to [webmaster@massbbo.org](mailto:webmaster@massbbo.org).

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